How to Leave the Euro More or Less Legally

verfassungsblog.de/how-to-leave-the-euro-more-or-less-legally/

There is much speculation, some of it silly, about how to leave the euro if you want to. Among the more barmy ideas is for the Eurogroup to follow the precedent of King Henry VIII who, if you remember, divorced the first of six wives by claiming that his marriage to Catherine of Aragon had been null and void in the first place. (This turned out to be quite a historic decision: relations between England and the rest of Europe have never been quite the same since.)

In similar fashion, it is argued today that as Greece was admitted originally to the eurozone under false accounting pretences, its membership of the single currency has been a living lie and therefore could be annulled.

Another line, taken by some Greek nationalists, is that Article 7 TEU should be used to relieve Greece of the euro on the grounds that the values and principles of the European Union (as laid down in Article 2 TEU), which include respect for 'human dignity', 'equality' and 'freedom', have been abused by the imposition of cruel debt conditions. Conversely, other commentators, some German, have wondered whether an Article 7 procedure could be triggered against Greece for a treacherous breach of its commitment to other values and principles of the European Union (also found in Article 2), notably 'democracy' and 'the rule of law'.

Avoiding madness

Both such lines of enquiry, in my view, indicate madness. Yet it remains the case that it is difficult to leave the single currency, whose establishment was deemed to be irrevocable (Article 140(3) TFEU), in an orderly manner. There is no provision in the treaties to ditch the euro, although thanks to the Lisbon treaty a state can negotiate to secede from membership of the European Union as a whole (Article 50 TEU).

A decision to extricate Greece from membership of the euro while remaining a member state of the EU could possibly be engineered under Article 352 TFEU. This legal base is the famous 'flexibility clause' that allows 'appropriate measures' to be taken to attain the EU's objectives in cases where 'the Treaties have not provided the necessary powers'. The frustrated objective here would be the consolidation of 'an economic and monetary union whose currency is the euro' (Article 3 TEU), on the assumption that Grexit would help things along.

There are two big problems, however, with the use of Article 352. The first is that unanimity is required in the Council, so Greece (or anyone else) could veto the plan. The second is that several national parliaments now insist on taking a vote on all Article 352 legislation. Needless to say, those national parliaments include the House of Commons whose members are probably in no mood to agree to any fix on Grexit independently of a decision on Brexit. But David Cameron will not be the only EU leader desperate to avoid being held hostage on this critical matter by his or her own parliament.

Avoiding unanimity

So is there a way for Greece to exit the euro by qualified majority voting (QMV)? Here the logical thing to do is turn to the decision-making process that applies to joining the euro, and reverse the thrust.

When a state joins the currency, a decision is taken by the full Council of Ministers by QMV according to the provisions of Article 140(2) TFEU. Because all member states (except the UK) are presumed to join the euro once they have fulfilled the Maastricht convergence criteria, admission to membership is technically the abrogation of the transitional derogation from membership. The Council decides on the basis of a proposal of the Commission, after consulting the European Parliament, after a instigating a discussion in the European Council – and after having received a recommendation from 55% of the eurozone states (that is 11), representing 65% of the population of the eurozone.

On the basis of such a Council decision, Greece would be relegated to the status of a state 'with a derogation' as laid down in Article 139 – in other words, waiting to get back into the euro when the time is ripe. Relegation would liberate Greece from the coercive disciplines of the broad economic policy guidelines, the excessive deficit procedure (no more Troika!), the macro-economic imbalances procedures, and the governance of the European Central Bank. Of course Greek banks would lose the possibility of being bailed out by the ESM and of receiving liquidity assistance from the ECB, but the Greek state would be liable to receive EU 'mutual assistance' (Article 143) and to take 'protective measures' (Article 144).

Would this reverse procedure be acceptable to the European Court of Justice in the very probable instance that it had to address the constitutional issue? Precedent suggests that the Luxembourg Court is fully capable of tolerating unorthodox measures of the EU institutions when taken by way of expedient crisis management - as long as the proper democratic procedures have been observed and so long as the wider and essential interests of the Union are protected. Doubtless the judicial eyebrow would be raised and a stern admonition would be added to the effect that the position of an errant state leaving the currency under the pressure of *force majeure* should be rectified in primary law at the time of the next treaty revision.

So be it. If continued Greek membership of the euro proves to be impossible, a managed exit from the euro could and should be done this way.

SUGGESTED CITATION Duff, Andrew: *How to Leave the Euro More or Less Legally, VerfBlog,* 2015/7/08, http://verfassungsblog.de/how-to-leave-the-euro-more-or-less-legally/.

There is much speculation, some of it silly, about how to leave the euro if you want to. Among the more barmy ideas is for the Eurogroup to follow the precedent of King Henry VIII who, if you remember, divorced the first of six wives by claiming that his marriage to Catherine of Aragon had been null and void in the first place. (This turned out to be quite a historic decision: relations between England and the rest of Europe have never been quite the same since.)

In similar fashion, it is argued today that as Greece was admitted originally to the eurozone under false accounting pretences, its membership of the single currency has been a living lie and therefore could be annulled.

Another line, taken by some Greek nationalists, is that Article 7 TEU should be used to relieve Greece of the euro on the grounds that the values and principles of the European Union (as laid down in Article 2 TEU), which include respect for 'human dignity', 'equality' and 'freedom', have been abused by the imposition of cruel debt conditions. Conversely, other commentators, some German, have wondered whether an Article 7 procedure could be triggered against Greece for a treacherous breach of its commitment to other values and principles of the European Union (also found in Article 2), notably 'democracy' and 'the rule of law'.

Avoiding madness

Both such lines of enquiry, in my view, indicate madness. Yet it remains the case that it is difficult to leave the single currency, whose establishment was deemed to be irrevocable (Article 140(3) TFEU), in an orderly manner. There is no provision in the treaties to ditch the euro, although thanks to the Lisbon treaty a state can negotiate to secede from membership of the European Union as a whole (Article 50 TEU).

A decision to extricate Greece from membership of the euro while remaining a member state of the EU could possibly be engineered under Article 352 TFEU. This legal base is the famous 'flexibility clause' that allows 'appropriate measures' to be taken to attain the EU's objectives in cases where 'the Treaties have not provided the necessary powers'. The frustrated objective here would be the consolidation of 'an economic and monetary union whose currency is the euro' (Article 3 TEU), on the assumption that Grexit would help things along.

There are two big problems, however, with the use of Article 352. The first is that unanimity is required in the Council, so Greece (or anyone else) could veto the plan. The second is that several national parliaments now insist on taking a vote on all Article 352 legislation. Needless to say, those national parliaments include the House of Commons whose members are probably in no mood to agree to any fix on Grexit independently of a decision on Brexit. But David Cameron will not be the only EU leader desperate to avoid being held hostage on this critical matter by his or her own parliament.

Avoiding unanimity

So is there a way for Greece to exit the euro by qualified majority voting (QMV)? Here the logical thing to do is turn to the decision-making process that applies to joining the euro, and reverse the thrust.

When a state joins the currency, a decision is taken by the full Council of Ministers by QMV according to the provisions of Article 140(2) TFEU. Because all member states (except the UK) are presumed to join the euro once they have fulfilled the Maastricht convergence criteria, admission to membership is technically the abrogation of the transitional derogation from membership. The Council decides on the basis of a proposal of the Commission, after consulting the European Parliament, after a instigating a discussion in the European Council – and after having received a recommendation from 55% of the eurozone states (that is 11), representing 65% of the population of the eurozone.

On the basis of such a Council decision, Greece would be relegated to the status of a state 'with a derogation' as laid down in Article 139 – in other words, waiting to get back into the euro when the time is ripe. Relegation would liberate Greece from the coercive disciplines of the broad economic policy guidelines, the excessive deficit procedure (no more Troika!), the macro-economic imbalances procedures, and the governance of the European Central Bank. Of course Greek banks would lose the possibility of being bailed out by the ESM and of receiving liquidity assistance from the ECB, but the Greek state would be liable to receive EU 'mutual assistance' (Article 143) and to take 'protective measures' (Article 144).

Would this reverse procedure be acceptable to the European Court of Justice in the very probable instance that it had to address the constitutional issue? Precedent suggests that the Luxembourg Court is fully capable of tolerating unorthodox measures of the EU institutions when taken by way of expedient crisis management - as long as the proper democratic procedures have been observed and so long as the wider and essential interests of the Union are protected. Doubtless the judicial eyebrow would be raised and a stern admonition would be added to the effect that the position of an errant state leaving the currency under the pressure of *force majeure* should be rectified in primary law at the time of the next treaty revision.

So be it. If continued Greek membership of the euro proves to be impossible, a managed exit from the euro could and should be done this way.

SUGGESTED CITATION Duff, Andrew: *How to Leave the Euro More or Less Legally, VerfBlog,* 2015/7/08, http://verfassungsblog.de/how-to-leave-the-euro-more-or-less-legally/.